

Robert S. Green (State Bar No. 136183)
James Robert Noblin (State Bar No. 114442)
Evan M. Sumer (State Bar No. 329181)
GREEN & NOBLIN, P.C.
2200 Larkspur Landing Circle, Suite 101
Larkspur, CA 94939
Telephone: (415) 477-6700
Facsimile: (415) 477-6710
Email: gnecf@classcounsel.com

William B. Federman, admitted *pro hac vice*
wbf@federmanlaw.com
Oklahoma Bar No. 2853
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120
Telephone: (405) 235-1560
Facsimile: (405) 239-2112

Counsel for Plaintiffs and the Proposed Class

Additional Counsel on Signature Page

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BRIGID POLING, *et al.*, individually and on
behalf of all others similarly situated and on
behalf of the general public,

Plaintiffs,

v.

ARTECH, L.L.C.,

Defendant.

CASE NO. 3:20-cv-07630-LB

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS'
FEES, REIMBURSEMENT OF
EXPENSES AND SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: February 10, 2022

Time: 9:30 a.m.

Judge: Maj. Judge Laurel Beeler

Ctrm: Courtroom B – 15th Floor

Action filed: October 29, 2020

NOTICE OF MOTION**TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on February 10, 2022 at 9:30 am, in Courtroom B, 15th Floor, of the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, or at such other time as may be set by the Court, the Honorable Magistrate Judge Laurel Beeler, presiding, Plaintiffs Brigid Poling and Dwight Jenkins will and hereby move for an Order pursuant to Rules 23(h)(1) and 54(d)(2) of the Federal Rules of Civil Procedure Awarding: (i) Attorneys' Fees and expenses to Class Counsel in the amount of \$350,000.00 (including the Service Awards sought for the Named Plaintiffs); and (ii) Service Awards for Plaintiffs Brigid Poling and Dwight Jenkins in the amount of \$2,500.00 each.

This motion is based upon this Motion, the Memorandum of Points and Authorities, the accompanying declaration of William B. Federman and declaration of Plaintiffs and any exhibits attached hereto, the pleadings filed in this Action, and other such matters and arguments as the Court may consider at the hearing on this motion.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should award \$350,000.00 to Class Counsel as Attorneys' Fees and unreimbursed expenses that Class Counsel reasonably and necessarily incurred in furtherance of the Action; and
2. Whether the Court should award Service Awards to Plaintiffs Brigid Poling and Dwight Jenkins in the amount of \$2,500.00 each, to be paid from the \$350,000.00, for their time and effort over the past thirteen months in supporting counsel pursuing this Action.

TABLE OF CONTENTS

1			
2	I.	INTRODUCTION.....	1
3	II.	Factual and Procedural Background	2
4		a. Informal Discovery	3
5		b. Plaintiffs Were Granted Preliminary Approval	3
6		c. The Settlement is the Product of Informed Negotiations and Resulted from Arm’s-Length	
7		Bargaining.....	4
8	III.	TERMS OF THE SETTLEMENT AGREEMENT	5
9		a. Settlement Benefits	5
10		i. Monetary Relief	5
11		ii. Injunctive Relief.....	7
12		iii. Notice to Class	9
13	IV.	CLASS COUNSEL’S REQUESTED FEES ARE REASONABLE AND FAIR.....	9
14		a. The Requested Attorneys’ Fee Award (Including Expense Reimbursement and Plaintiffs’	
15		Service Awards) is Reasonable Under the Lodestar Analysis.....	10
16		b. Class Counsel Expended Significant Time and Resources to Resolve the Action	11
17		c. Class Counsel’s Hourly Rates are Reasonable	12
18		d. A Lodestar Multiplier is Justified	14
19		i. Class Counsel Achieved a Significant Benefit to the Class	14
20		ii. Class Counsel Took a Significant Risk Pursuing this Action.....	15
21		iii. Class Counsel Provided High-Quality Representation to the Class.....	16
22		iv. The Requested Fee and Expense Award Would Result in a Multiplier of	
23		approximately 1.59, Which is Extremely Modest and Reasonable.....	17
24		ii. The Fee Award Requested is Reasonable Under a Percentage of Recovery	
25		Analysis.....	18
26		v. The Absence of Collusion Between the Settling Parties Further Supports the	
27		Requested Fee Award.....	22
28			

1	V.	THE EXPENSES REQUEST IS REASONABLE	22
2	VI.	THE NAMED PLAINTIFFS SHOULD BE AWARDED SERVICE AWARDS	23
3	VII.	CONCLUSION	24
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORTIES

Cases	Page(s)
<i>Alpine Pharmacy v. Chas. Pfizer & Co.</i> , 481 F.2d 1045 (2d Cir. 1973).....	21
<i>Barbosa v. Cargill Meat Solutions Corp.</i> , 297 F.R.D. 431 (E.D. Cal. July 1, 2013).....	16, 21
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984).....	21
<i>Craft v. County of San Bernardino</i> , 624 F. Supp. 2d 1113 (C.D. Cal. 1995)	18
<i>Fischel v. Equitable Life Assur. Soc’y of the United States</i> , 307 F.3d 997 (9th Cir. 2002)	15
<i>Foos v. Ann, Inc.</i> , 2013 U.S. Dist. LEXIS 136918 (S.D. Cal. 2013)	11
<i>Friedman v. Quest Energy Partners LP</i> , 2010 WL 4925133 (W.D. Okla. Nov. 29, 2010)	14
<i>Harris v. Vector Mktg. Corp.</i> , 2011 WL 1627973 (N.D. Cal. Apr. 29, 2011)	5
<i>Hartless v. Clorox Co.</i> , 273 F.R.D. 630 (S.D. Cal. 2011)	9, 10, 18
<i>Hernandez v. Restoration Hardware, Inc.</i> , 4 Cal.5th 260 (2018)	9
<i>Hershey v. ExxonMobil Oil Corp.</i> , 2012 U.S. Dist. LEXIS 153803 (D. Kan. Oct. 26, 2012)	21
<i>In re Anthem, Inc. Data Breach Litig.</i> , 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018)	13
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935	14, 19
<i>In re Immune Response Sec. Litig.</i> , 497 F. Supp. 2d 1166 (S.D. Cal. 2007).....	23

1	<i>In re M.D.C. Holdings Sec. Litig.</i> ,	
2	1990 WL 454747 (S.D. Cal. Aug. 30, 1990)	21
3	<i>In re Nasdaq Mkt.-Makers Antitrust Litig.</i> ,	
4	187 F.R.D. 465 (S.D.N.Y. 1998)	18
5	<i>In re Omnivision Techs.</i> ,	
6	559 F. Supp. 2d 1036 (N.D. Cal. 2007)	15, 16
7	<i>In re Online DVD-Rental Antitrust Litig.</i> ,	
8	779 F.3d 934 (9th Cir. 2015)	23
9	<i>In re Sony SXRDRear Projection Television Class Action Litig.</i> ,	
10	2008 WL 1956267 (S.D.N.Y. May 1, 2008)	10
11	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> ,	
12	19 F.3d 1291 (9th Cir. 1994)	15
13	<i>In re Yahoo! Inc. Customer Data Sec. Breach Litig.</i> ,	
14	2020 WL 4212811 (N.D. Cal. July 22, 2020).....	13
15	<i>Jane L. v. Bangerter</i> ,	
16	61 F.3d 1505 (10th Cir. 1995)	13
17	<i>Jeffboat LLC. v. Director, Office of Workers' Comp Programs</i> ,	
18	553 F.3d 487 (7th Cir. 2009)	13
19	<i>Kirchoff v. Flynn</i> ,	
20	786 F.2d 320 (7th Cir. 1986)	21
21	<i>Lane v. Page</i> ,	
22	862 F. Supp. 2d 1182 (D.N.M. 2012)	10
23	<i>Maley v. Del Global Techs. Corp.</i> ,	
24	186 F. Supp. 2d 358 (S.D.N.Y. 2002).....	18
25	<i>McKenzie Constr., Inc. v. Maynard</i> ,	
26	823 F.2d 43 (3d Cir. 1987).....	21
27	<i>Mirakay v. Dakota Growers Pasta Co.</i> ,	
28	2014 WL 5358987 (D.N.J. Oct. 20, 2014).....	10
	<i>Morales v. City of San Rafael</i> ,	
	96 F.3d 359 (9th Cir. 1996)	11

1	<i>Nakkhumpun v. Taylor</i> ,	
2	2016 WL 11724397 (D. Colo. June 13, 2016).....	14
3	<i>Pauley v. Cf Entm't</i> ,	
4	2020 U.S. Dist. LEXIS 187614 (C.D. Cal. July 23, 2020).....	23
5	<i>Rodriguez v. Disner</i> ,	
6	688 F.3d 645 (9th Cir. 2012)	9
7	<i>Rosenbaum v. MacAllister</i> ,	
8	64 F.3d 1439 (10th Cir. 1995)	10
9	<i>Stanaford v. Genovese</i> ,	
10	2015 WL 4930209 (S.D. Fla. Aug. 17, 2015).....	14
11	<i>Stanger v. China Elec. Motor, Inc.</i> ,	
12	812 F.3d 734 (9th Cir. 2016)	15
13	<i>Staton v. Boeing Co.</i> ,	
14	327 F.3d 938 (9th Cir. 2003)	9, 15
15	<i>Stetson v. Grissom</i> ,	
16	821 F.3d 1157 (9th Cir. 2016)	9, 15
17	<i>United Steelworkers of Am. v. Phelps Dodge Corp.</i> ,	
18	896 F.2d 403 (9th Cir. 1990)	12
19	<i>Vizcaino v. Microsoft Corp.</i> ,	
20	290 F.3d 1043 (9th Cir. 2002)	Passim
21	<i>Weinberger v. Great N. Nekoosa Corp.</i> ,	
22	925 F.2d 518 (1st Cir. 1991).....	10
23	<i>Welch v. Metro. Life Ins. Co.</i> ,	
24	480 F.3d 942 (9th Cir. 2007)	13
25	<i>Wershba v. Apple Comput., Inc.</i> ,	
26	91 Cal. App. 4th 224 (2001)	9
27	<i>Zucker v. Occidental Petroleum Corp.</i> ,	
28	192 F.3d 1323 (9th Cir. 1999)	9
	Statutes	
	Cal. Bus. & Prof. Code §17200.....	3
	Cal. Civ. Code §1798.100	3
	Cal. Civ. Code §1798.80	3

1	Rules	
2	Fed. R. Civ. P. 23(h).....	9
3	Rules 23(h)(1) and 54(d)(2) of the Federal Rules of Civil Procedure.....	1
4	Other Authorities	
5	3 Newberg § 14.03	17
6	4 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> , § 14:6 (4th ed. 2006).....	21
7	Rubenstein, <i>Newberg on Class Actions</i> § 15:56 (5th ed. 2016)	10
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiffs Brigid Poling and Dwight Jenkins (“Plaintiffs” or “Named Plaintiffs”) through
3 their undersigned counsel, respectfully move this Court for entry of an Order approving: (1) Class
4 Counsel’s¹ requested attorneys’ fees award and reimburse expenses in the amount of \$350,000.00;
5 and (2) service awards to the Named Plaintiffs of \$2,500.00 each.

6 This data breach action (the “Action”) arises out of the alleged negligence by Defendant
7 Artech, L.L.C. (“Artech” or “Defendant”) in allegedly failing to safeguard the Personal Information
8 of current and former employees from unauthorized access and disclosure.

9 On or about September 4, 2020, Defendant began notifying individuals, including Plaintiffs
10 and other Class members, that on January 8, 2020, Defendant received a report of unusual activity
11 relating to an employee’s Artech user account. A subsequent investigation determined that an
12 unauthorized cybercriminal gained access to certain of Defendant’s computer systems between
13 January 5, 2020 and January 8, 2020 (the “Cyber Security Event”). The Personal Information (or
14 personality identifiable information (“PII”)) potentially accessible during the Cyber Security Event
15 included names, Social Security numbers, medical information, health insurance information,
16 financial information, payment card information, driver’s license/state identification numbers,
17 government issued identification numbers, passport numbers, visa numbers, electronic/digital
18 signatures, usernames and password information. As a result, Plaintiffs have suffered damages
19 related to the Cyber Security Event.
20

21 The parties attended a full-day mediation session on June 28, 2021 before mediator Judge
22 Edward A. Infante (Ret.) in which the parties reached agreement on essential terms. Negotiations
23 continued and the proposed resolution received preliminary approval by this Court on September
24 30, 2021 (ECF No. 43)². The Settlement provides meaningful benefits to the Settlement Class
25

26 _____
27 ¹ For purposes of this Motion, “Class Counsel” herein shall refer to Plaintiffs’ counsel, Federman
28 & Sherwood, Green & Noblin, P.C., and Abington Cole + Ellery.

² The deadlines set forth in the Preliminary Approval Order were reset in the Order Amending
Procedures for Final Approval Hearing and Deadlines Set in Preliminary Approval Order (ECF No.
43), entered herein on October 29, 2021 (ECF No. 47).

1 members (“Class members”).³

2 Plaintiffs submit this motion and memorandum of points and authorities in support thereof
 3 in accordance with the Court’s Order Amending Procedures for Final Approval Hearing and
 4 Deadlines Set in Preliminary Approval Order (ECF No. 43), entered herein on October 29, 2021
 5 (ECF No. 47). Artech has agreed not to oppose Class Counsel’s request for attorneys’ fees,
 6 reimbursement of expenses, and Plaintiffs’ service awards totaling \$350,000.00. *See* SA, ¶¶72, 74
 7 (Doc. No. 36-1).

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 Defendant is a workforce solutions company providing managed services, contingent labor,
 10 staff augmentation, IT consulting, project outsourcing, and statement of work services across
 11 multiple industries, including systems integration, banking and finance, telecommunications,
 12 pharmaceutical and life sciences, energy, healthcare, technology, transportation, and local and
 13 federal government agencies. *See* First Amended Class Action Complaint, (Doc. No. 31, ¶1) (the
 14 “FAC”).

15
 16 On or about September 4, 2020, Defendant began notifying individuals, including Plaintiffs
 17 and other Class members, that on January 8, 2020, Defendant received a report of unusual activity
 18 relating to an employee’s Artech user account. A subsequent investigation determined that an
 19 unauthorized cybercriminal gained access to certain of Defendant’s computer systems between
 20 January 5, 2020 and January 8, 2020 (the “Cyber Security Event”). *Id.* ¶ 2. The Personal Information
 21 potentially accessible during the Cyber Security Event included names, Social Security numbers,
 22 medical information, health insurance information, financial information, payment card
 23 information, driver’s license/state identification numbers, government issued identification
 24 numbers, passport numbers, visa numbers, electronic/digital signatures, usernames and password

25 ³ Unless otherwise indicated, the defined terms herein shall have the same definition as set forth in
 26 the Settlement Agreement and Release dated August 3, 2021 (the “Settlement Agreement” or “SA”),
 27 filed on August 5, 2021 (ECF No. 36-1). The Settlement Class is comprised of the following:

28 All persons in the United States and Overseas Military identified on the “Settlement
 Class List,” as defined in the Settlement Agreement, including all individuals who
 were sent notification by Artech that their Personal Information may have been
 accessible during the Cyber Security Event.

1 information. *Id.* ¶ 3.

2 The original class action complaint was filed on October 29, 2020 (Doc. No. 1). On July 16,
3 2021, Plaintiffs filed the FAC, adding Plaintiff Jenkins as a Named Plaintiff and alleging causes of
4 action for negligence, invasion of privacy, unjust enrichment, breach of fiduciary duty, breach of
5 confidence, breach of implied contract, breach of implied covenant of good faith and fair dealing,
6 violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code §17200, *et seq.*),
7 violations of the California Customer Records Act (Cal. Civ. Code §1798.80, *et seq.*), violations of
8 California’s Consumer Privacy Act (Cal. Civ. Code §1798.100, *et seq.*), and injunctive/declaratory
9 relief. *See generally*, FAC (Doc. No. 31). Defendant denies the allegations and all liability. SA, p.
10 1 (Doc. No. 36-1).

11 **a. Informal Discovery**

12 Plaintiffs and Defendant (collectively, the “Parties”) engaged in informal discovery leading
13 up to the mediation and Settlement. The Parties had ongoing written and oral communications to
14 address the information and exchanged documents critical for a meaningful mediation, which Artech
15 provided. *See* Declaration of William B. Federman in Support of Plaintiffs’ Notice of Motion and
16 Motion for Preliminary Approval of Proposed Settlement and Memorandum of Points and
17 Authorities in Support Thereof, ¶6 (“Federman Preliminary Approval Dec.”) (Doc. No. 36-2).
18 Plaintiffs engaged cyber security experts who were involved in drafting and submitting to Artech
19 informal requests for information and production of documents. *Id.* ¶7. The individual Plaintiffs
20 worked diligently with their counsel to provide documents and information necessary to aid the
21 Class in furtherance of settlement negotiations. *Id.* ¶8.

22 The Parties held a global meeting before the mediation, which included both Parties’ experts,
23 to engage in a discussion regarding the Cyber Security Event and to assess and opine on the impact
24 of the Cyber Security Event on both the Class members and Artech. This meeting proved useful in
25 informing Class Counsel on settlement discussions. *Id.* ¶6.

26 **b. Plaintiffs Were Granted Preliminary Approval**

27 By Order dated September 30, 2021, the Court granted Plaintiffs’ Motion for Preliminary
28

1 Approval of Proposed Settlement (“Preliminary Approval Order”) (Doc. No. 43). The deadlines set
 2 forth in the Preliminary Approval Order were reset in the Order Amending Procedures for Final
 3 Approval Hearing and Deadlines Set in Preliminary Approval Order (Doc No. 43), entered herein
 4 on October 29, 2021 (Doc. No. 47) (“Order Amending”). Pursuant to the Order Amending, the last
 5 day to submit motion for attorney’s fees, costs, and service or incentive awards is no later than 35
 6 calendar days before the opt-out and objection deadlines (December 3, 2021). Class members may
 7 object to or opt out of the settlement until 40 calendar days after the Notice Deadline (January 7,
 8 2022) (Order Amending, Doc No. 47).

9 The Court will hold the Final Approval Hearing on February 10, 2021, during which time
 10 the Court will also hear this Motion for Attorney Fees, Expenses, and Service Awards. *Id.* Class
 11 Counsel will submit a Proposed Order regarding all motions pending before the Court in advance of
 12 the Final Approval Hearing.

13
 14 **c. The Settlement is the Product of Informed Negotiations and Resulted from**
 15 **Arm’s-Length Bargaining**

16 The Settlement accounts for the strengths and weaknesses of each Party’s position and the
 17 uncertainty regarding class certification, trial, or both. *See* Declaration of William B. Federman, ¶3,
 18 (“Federman Dec.”), **Exhibit 1**, attached hereto. Prior to agreeing to settle this matter, both Parties
 19 spoke with their clients about the Cyber Security Event. *Id.*, ¶4, **Ex. 1**. The Parties reviewed
 20 documents and information relating to Plaintiffs’ employment with Defendant, Plaintiffs’
 21 experiences and injuries related to the Cyber Security Event, and general information related to the
 22 Cyber Security Event’s cause and Artech’s response to the Cyber Security Event. *Id.*, ¶5, **Ex. 1**.

23 The Parties have actively litigated this matter since it commenced in October 2020. Prior to
 24 reaching the Settlement, the Parties extensively investigated the veracity, strength, and scope of the
 25 claims. *Id.*, ¶6, **Ex. 1**. The Parties have reached the Settlement based on a large volume of facts,
 26 evidence, and investigation. *Id.*, ¶7, **Ex. 1**. Class Counsel conducted significant investigation into
 27 this case, engaged in informal discovery, worked with experts from both sides, and reviewed and
 28 analyzed information provided by Defendant. *Id.*, ¶8, **Ex. 1**. Class Counsel also worked with the

1 Named Plaintiffs to gather facts. *Id.*, ¶9, Ex. 1. Counsel for the Parties met and conferred multiple
 2 times regarding issues related to the pleadings, informal discovery, motion practice, mediation and
 3 settlement, and the production of information. *Id.*, ¶10, Ex. 1.

4 “An initial presumption of fairness is usually involved if the settlement is recommended by
 5 class counsel after arm’s-length bargaining.” *Harris v. Vector Mktg. Corp.*, No. 08-cv-5198, 2011
 6 WL 1627973 at *8 (N.D. Cal. Apr. 29, 2011) (internal citations omitted).

7 In anticipation of the scheduled mediation date of June 28, 2021, Plaintiffs sent a detailed
 8 demand letter to Artech, setting forth a proposed settlement structure to guide negotiations.
 9 Federman Preliminary Approval Dec., ¶11 (Doc. No. 36-2). On June 28, 2021, after a full day of
 10 mediation with Judge Edward A. Infante (Ret.) and arm’s length negotiations, the Parties agreed to
 11 most of the settlement terms. *Id.* ¶12. Arm’s-length negotiations continued over the following days
 12 to address the remaining issues until an agreement was reached on all issues that comprise the
 13 Settlement Agreement. *Id.*

14 **III. TERMS OF THE SETTLEMENT AGREEMENT**

15 The Settlement Class, as defined *supra*, is comprised of 30,720 individuals.

16 **a. Settlement Benefits**

17 The settlement provides for monetary, injunctive, and other relief.

18 **i. Monetary Relief**

19 **A. Cash Payment for Reimbursement of Out-of-Pocket** 20 **Losses**

21 Settlement Class members may submit a claim for up to a maximum of \$10,000.00 for
 22 reimbursement of out-of-pocket expenses or losses. *See* Settlement Agreement and Release, Ex. 1
 23 to Plaintiffs’ Motion for Preliminary Approval, ¶¶ 40, 50 (Doc. No. 36-1). “Out-of-Pocket” expenses
 24 or losses are unreimbursed costs or expenditures incurred by a Class member that are fairly traceable
 25 to the Cyber Security Event. These may include, but are not limited to: costs associated with credit
 26 monitoring or identity theft insurance purchased directly by the claimant, provided that the product
 27 was purchased primarily as a result of the Cyber Security Event; costs associated with requesting a
 28

1 credit report, provided that the claimant requested the report primarily as a result of the Cyber
2 Security Event; costs associated with a credit freeze, provided that the claimant requested the freeze
3 primarily as a result of the Cyber Security Event; costs associated with cancelling a payment card
4 and/or obtaining a replacement payment card, provided that the claimant's request for the
5 cancellation and/or replacement was primarily the result of the Cyber Security Event; costs
6 associated with closing a bank account and/or opening a new bank account, provided that the
7 claimant's request to close and/or open a bank account was primarily the result of the Cyber Security
8 Event; postage, long-distance phone charges, express mail and other incidental expenses, provided
9 that the claimant provides documentation of the charges and an explanation of their relationship to
10 the Cyber Security Event; overdraft and/or overdraft protection fees, provided that the fees were
11 incurred as a result of the Cyber Security Event; late and/or missed payment fees and/or charges,
12 provided that the fees and/or charges were incurred as a result of the Cyber Security Event; the
13 increase in interest on credit cards or other loans caused by a late or missed payment that was a
14 result of the Cyber Security Event; and damage to credit and costs associated with a decreased credit
15 score if fairly traceable to result of the Cyber Security Event. *Id.*, Ex. 1, ¶22 (Doc. No. 36-1). The
16 submitted evidence must show: (a) the loss is an actual, documented, and unreimbursed monetary
17 loss as shown by (i) third party documentation supporting the loss; and (ii) a brief description of the
18 documentation describing the nature of the loss, if the nature of the loss is not apparent from the
19 documentation alone. Third-party documentation can include receipts or other documentation not
20 "self-prepared" by the Participating Settlement Class Member that documents the costs incurred.
21 Self-prepared documents such as handwritten receipts are, by themselves, insufficient to receive
22 reimbursement, but can be considered to add clarity or support other submitted documentation; (b)
23 the loss was more-likely-than-not caused by identity theft or other fraud or misuse of the Personal
24 Information fairly traceable to the Cyber Security Event; (c) the loss occurred after January 5, 2020;
25 and (d) the Settlement Class member made reasonable efforts to avoid or seek reimbursement for
26 the loss, including but not limited to exhaustion of all available credit monitoring insurance and
27 identity theft insurance. *Id.*, Ex. 1, ¶40 (Doc. No. 36-1).
28

1 A stellar feature of the Settlement is there will be no aggregate cap on the amounts paid to
 2 Settlement Class members. Federman Preliminary Approval Dec., ¶¶18, 19 (Doc. No. 36-2). A
 3 claim for reimbursement of any such losses must be accompanied by information required by the
 4 Settlement Administrator to evaluate the claim. Ex. 1, ¶¶39, 40 (Doc. No. 36-1). Further, because
 5 there is no aggregate cap, there is **no** possibility of reversion.

6 **B. Cash Payment for Reimbursement of Time**

7 Settlement Class members may submit a claim for reimbursement of up to three (3) hours,
 8 at \$26.67 per hour, for time spent remedying issues related to the Cyber Security Event, provided
 9 that the Settlement Class member provides documentation or a narrative explanation plausibly
 10 establishing that the time was spent dealing with issues related to the Cyber Security Event. Ex. 1,
 11 ¶¶39, 40 (Doc. No. 36-1).

12 **C. Three Years of Credit Monitoring and Identity Theft** 13 **Protection Program**

14 All Participating Settlement Class Members shall have until three (3) months following the
 15 Final Approval Hearing to request access or extension of their access to credit monitoring and
 16 identity protection services through Kroll paid for by Defendant for a period of three (3) years after
 17 their actual enrollment or the Claims Deadline, whichever is later. *Id.*, Ex. 1, ¶38 (Doc. No. 36-1).

18 **ii. Injunctive Relief**

19 Artech, having engaged a third-party cybersecurity consultant, has agreed to continue, adopt
 20 and/or implement certain business practices and remedial measures (“Business Practice
 21 Commitments”) for a period of at least three years following the Effective Date of the Settlement,
 22 including the following with regard to the Personal Information of former and current employees
 23 and job applicants:
 24

- 25 a. Artech has conducted baseline penetration testing through a well-established third-party
 26 IT security vendor, and will continue to conduct substantially-equivalent penetration
 27 testing at least annually. Defendant has included sufficient funds in its IT security
 28 budget to accomplish annual penetration testing as outlined in this subparagraph for

1 2021, and will reauthorize sufficient funds in its IT budget for each subsequent year
2 through 2024 to utilize the same or any comparably-priced improved testing technology
3 as may be available.

4 b. Artech shall continue to ensure that anti-malware software resides on all its servers, and
5 that its VPN appliance is updated as soon as practicable after security updates become
6 available, but in no instance less often than monthly.

7 c. Artech is implementing a company-wide encryption protocol wherein all Personal
8 Information is segregated by its employees and encrypted daily.

9 d. Artech is testing its IT security for NIST compliance, and has achieved compliance with
10 many NIST requirements, with the remainder to be addressed through SIEM software.
11 Defendant will provide a declaration or certification of such compliance on or before
12 December 21, 2022.

13 e. Artech is currently evaluating several Security Information and Event Management
14 (“SIEM”) software options and shall deploy SIEM software on or before December 31,
15 2022.

16 f. Artech currently provides IT security and Personal Information training to all of its
17 personnel during onboarding, and on a quarterly basis thereafter, which will continue.
18 This training includes directions about how to handle suspicious communications and
19 documents and encourages personnel to report any concerns about Artech’s information
20 security systems.

21 g. Artech has developed and implemented a formal written Personal Information policy,
22 which it will continue to maintain with appropriate updates.

23 h. Artech is developing a suite of testing and auditing tools through a third-party vendor
24 designed to locate Personal Information located outside Artech’s encrypted
25 environment, which will be implemented on or before December 31, 2021. Artech shall
26 provide to the Court a certification from its third-party vendor that all Personal
27
28

Information located during the auditing process has been either destroyed or moved to Artech's encrypted environment.

- i. Artech shall continue to provide employees and former employees a means requesting their Social Security numbers and dates of birth be deleted after such information is no longer needed to fulfill Artech's corporate mission, and will delete such information upon request.

Id., Ex. 1, ¶51 (Doc. No. 36-1).

iii. Notice to Class

Payment of all costs associated with providing Notice and administration of the settlement will be paid by Artech. *Id.*, Ex. 1, ¶76 (Doc. No. 36-1). The Settlement Administrator has begun providing notice to the Settlement Class. Federman Dec., ¶11, Ex. 1.

IV. CLASS COUNSEL'S REQUESTED FEES ARE REASONABLE AND FAIR

The Court has inherent authority to ensure that the amount and mode of payment of attorney fees in class actions are fair and proper. *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328-29 (9th Cir. 1999). "In class action litigation, a district court 'may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement.'" *Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016) (citing *Rodriguez v. Disner (Rodriguez II)*, 688 F.3d 645, 653 (9th Cir. 2012) (quoting Fed. R. Civ. P. 23(h))). The Court should "carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement." *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

"In diversity actions [like this], the Ninth Circuit applies state law to determine the right to fees and the method for calculating fees." *Hartless v. Clorox Co.*, 273 F.R.D. 630, 642 (S.D. Cal. 2011). Both California state and federal courts recognize two methods for evaluating attorney fees: (1) lodestar plus multiplier method; and (2) the percentage of recovery method. *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 254 (2001) (disapproved on other grounds in *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 269-70 (2018)); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "Under California law, the primary method for determining the amount

of reasonable attorneys' fees is the lodestar method." *Hartless*, 273 F.R.D. at 642. In cases in which the class benefit can be monetized with a reasonable degree of certainty, a percentage of the benefit approach may be used to cross-check the lodestar calculation." *Id.* Moreover, courts routinely acknowledge that parties may settle claims for attorney fees in a class action by entering into an agreement requiring a defendant to pay the plaintiff's attorney fees. *See Weinberger v. Great N. Nekoosa Corp.*, 925 F.2d 518, 523 (1st Cir. 1991).

Here, "the parties negotiated and agreed upon the attorneys' fee provision in the Settlement,"—but only *after* the substantive terms of the Settlement were finalized, Federman Dec., ¶12, Ex. 1—so "regardless of the size of the fee award, class members who apply for recovery under the terms of the Settlement will receive the same benefit; the fee award does not reduce the recovery to the class." *In re Sony SXRDRear Projection Television Class Action Litig.*, No. 06 CIV. 5173 (RPP), 2008 WL 1956267, at *15-16 (S.D.N.Y. May 1, 2008). An independently negotiated fee award gives the defendant an incentive to bargain aggressively and thus diminishes the danger of conflicts of interest between attorneys and class members, greatly reducing the Court's fiduciary role in overseeing the award. *Mirakay v. Dakota Growers Pasta Co.*, No. 13-CV-4429 JAP, 2014 WL 5358987, at *11 (D.N.J. Oct. 20, 2014); *see also Lane v. Page*, 862 F. Supp. 2d 1182, 1258 (D.N.M. 2012) (approving fees that were negotiated separately and that did not diminish class recovery).

a. The Requested Attorneys' Fee Award (Including Expense Reimbursement and Plaintiffs' Service Awards) is Reasonable Under the Lodestar Analysis

In a case like this one, in which the parties reach a settlement with a claims-made structure that has no upper cap on relief, courts evaluate attorney fee requests primarily by using what is known as the lodestar method. This is because a claims-made settlement has an indefinite total value and is not typically capable of being characterized as a true "common fund" for the purpose of a percentage-of-the-fund fee analysis. *See Rosenbaum v. MacAllister*, 64 F.3d 1439, 1447-48 (10th Cir. 1995) (percentage award not warranted where settlement provides common benefit but does not create common fund); Rubenstein, *Newberg on Class Actions* § 15:56 (5th ed. 2016)

1 (“Newberg”) (noting that “[c]laims-made settlements do not create a common fund”). All fees and
 2 costs awarded here, moreover, will be paid separately by Defendant and will not reduce the amount
 3 paid to the Class in any way.

4 “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party
 5 reasonably expended on the litigation by a reasonable hourly rate.” *Morales v. City of San Rafael*,
 6 96 F.3d 359, 363 (9th Cir. 1996) (internal citations omitted). “The hours expended and the rate
 7 should be supported by adequate documentation and other evidence...” *Foos v. Ann, Inc.*, 2013 U.S.
 8 Dist. LEXIS 136918, *12 (S.D. Cal. 2013).

9 **b. Class Counsel Expended Significant Time and Resources to Resolve the Action**

10 Class Counsel has litigated this matter for more than a year. Class Counsel’s work in this
 11 litigation includes significant investigation into the facts and informal written discovery, including
 12 a global meeting held between Plaintiffs’ and Defendant’s cybersecurity experts. Federman Dec.
 13 ¶13, **Ex. 1**. As discussed in Section II.c, *supra*, the work in this matter has been extensive,
 14 demanding, and ultimately successful in achieving a substantial settlement. Class Counsel are well
 15 experienced class action data breach attorneys and used that experience to obtain a significant
 16 settlement. *Id.*, ¶14, **Ex. 1**.

17 To successfully pursue the claims at issue in this case and to achieve the resulting Settlement,
 18 Class Counsel spent 296.45 total hours of partner, associate, and paralegal time.⁴ *Id.*, ¶15, **Ex. 1**.
 19 Federman & Sherwood timekeepers have spent 221.35 hours through November 29, 2021, with
 20 hourly rates ranging from \$250.00 for work performed by a paralegal and \$400.00-\$850.00 for work
 21 performed by four attorneys. *Id.*, ¶16, **Ex. 1**. Timekeepers from Green & Noblin, P.C., who acted as
 22 local counsel, spent 11.20 hours litigating this matter, and timekeepers from co-counsel Abington
 23 Cole + Ellery spent 63.90 hours litigating this matter. *Id.*, ¶17, **Ex. 1**. In addition, Class Counsel
 24 anticipates spending additional time seeking final approval and assisting with settlement
 25 administration as needed including follow up telephone calls and contact with members of the Class.
 26
 27

28 ⁴ Class Counsel are prepared to provide the Court with Class Counsel’s detailed billing entries for
in camera review should the Court request it.

1 *Id.*, ¶18, **Ex. 1**. All total, Class Counsel estimate that the attorney and paralegal time commitment
 2 for past completed and future anticipated work will be at least 346.45 hours. *Id.*, ¶19, **Ex. 1**. Class
 3 counsel also incurred total expenses of \$16,041.95 including \$5,625.00 in expert fees. *Id.*, ¶20,
 4 **Ex. 1**.

5 The 296.46 total hours expended by Class Counsel does *not* include the time expended by
 6 Class Counsel in preparing the present Motion, *nor* does it include reductions made in the exercise
 7 of billing judgment, *nor* does it include the additional hours that Class Counsel will continue to
 8 work even after Final Approval. *Id.*, ¶21, **Ex. 1**. In Class Counsel's professional opinion, the time
 9 submitted to the Court is of the kind and character that Counsel would bill to a fee-paying client and
 10 is reasonable in light of the complexity of this litigation. *Id.*, ¶22, **Ex. 1**.

11 Moreover, Class Counsel staffed this case efficiently from the outset, primarily utilizing two
 12 attorneys experienced in data breach class actions: William B. Federman and Molly E. Brantley. *Id.*,
 13 ¶23, **Ex. 1**. Mr. Federman and Ms. Brantley were both actively managing this litigation from
 14 inception through the present. *Id.*, ¶24, **Ex. 1**. Importantly, Ms. Brantley, who bills at an appreciably
 15 lower rate than Mr. Federman, was assigned the more time-consuming yet critical tasks such as
 16 substantive researching and drafting. These staffing decisions resulted in Class Counsel billing
 17 considerably less on the case than if more senior attorneys had handled Ms. Brantley's tasks or if
 18 more attorneys had been involved.

19 Class Counsel have also incurred \$16,041.95 in expenses litigating this matter, all on a
 20 contingency basis with a significant risk of no recovery. Federman & Sherwood incurred \$15,054.72
 21 in litigation costs and expenses for the Action, and Green & Noblin, P.C. incurred \$987.23 in
 22 expenses. *Id.*, ¶25, **Ex. 1**. Class Counsel's costs incurred to date are for expert fees, postage,
 23 Westlaw and PACER charges, photocopies, and mediation expenses. *Id.*, ¶26, **Ex. 1**.

24 **c. Class Counsel's Hourly Rates are Reasonable**

25 Prior court approvals of fee applications based on Class Counsel's same or similar rates in
 26 the consumer class action context offer one basis to conclude that Class Counsel's hourly rates are
 27 reasonable for similar work. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407
 28

(9th Cir. 1990) (“Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.”). “District courts have the discretion to compensate plaintiff’s attorneys for a delay in payment by either applying the attorneys’ current rates to all hours billed during the course of the litigation or using the attorneys’ historical rates and adding a prime rate enhancement.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007).

Class Counsel’s timekeeper rates are within a reasonable range. Federman & Sherwood’s hourly rates range from \$400 to \$850 for attorneys with two to thirty-nine years of experience and \$250.00 for a paralegal with thirteen years of experience; these rates are reasonable contingency fee rates for each timekeeper. Federman Dec. ¶27, **Ex. 1**. In addition, Green & Noblin, P.C.’s timekeeper rates are also within a reasonable range: \$850.00/hour for an attorney with more than thirty-seven years’ experience. *Id.*, ¶28, **Ex 1**. Co-counsel from Abington Cole + Ellery, who has more than twenty years’ experience, seeks an hourly rate of \$750.00. *Id.*, ¶29, **Ex 1**.

Further, Class Counsel’s rates are reasonable when compared with the rates commonly approved in data breach class actions. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (finding billing rates—which ranged from \$450 to \$900 for partners, \$160 to \$850 for non-partner attorneys, and \$50 to \$440 for paralegals and staff—are “reasonable and in line with amounts charged in similar cases”) (discussing cases); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *17 (N.D. Cal. Aug. 17, 2018) (approving hourly billing rates, which ranged from \$400 to \$970 for partners, \$185 to \$850 for non-partner attorneys, and \$95 to \$440 for paralegals, law clerks, and litigation support staff). Because data breach class actions are a highly specialized area of law, the Court’s analysis is informed by these national rates approved in other data breach actions. *See Jane L. v. Bangerter*, 61 F.3d 1505, 1510 (10th Cir. 1995) (noting that, when “special skills” are required for unique litigation, the market for reasonable hourly rates may be expanded); *Jeffboat LLC. v. Director, Office of Workers’ Comp Programs*, 553 F.3d 487, 490 (7th Cir. 2009)

(holding that it is appropriate to view a relevant community as a community of practitioners where “the attorneys practicing are highly specialized and the market for legal services in that area is a national market”).

Federman & Sherwood, the primary timekeeper in this matter, consists of highly experienced attorneys who have successfully prosecuted numerous data breach class actions, consumer class actions, and other complex litigation matters. Federman Dec. ¶30, **Ex. 1**. Class Counsel’s lodestar reflects the attorneys’ usual billing rates. *Id.*, ¶31, **Ex. 1**. Federman & Sherwood’s billing rates have been evaluated and found to be reasonable by numerous courts in and around the country. *See, e.g., In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prod. Liab. Litig.*, No. 17-ml-2792-D (W.D. Okla., Jun. 11, 2020) (Dkt. No. 256), slip op. at 15 (finding that Federman & Sherwood’s billing rates “are reasonable” for the “geographic area[] in comparable cases, and Class Counsel’s affidavits support the request’s reasonableness”) *aff’d*, 2021 WL 1825685, at *12 (10th Cir. May 7, 2021); *Nakkhumpun v. Taylor*, No. 12-CV-01038-CMA-CBS, 2016 WL 11724397, at *5 (D. Colo. June 13, 2016) (finding Federman & Sherwood’s billings reasonable and approving fee request); *Stanaford v. Genovese*, No. 9:13-CV-80923 (KLR), 2015 WL 4930209, at *1 (S.D. Fla. Aug. 17, 2015) (same); *Friedman v. Quest Energy Partners LP*, No. CIV-08-1025-M, 2010 WL 4925133, at *6 (W.D. Okla. Nov. 29, 2010) (same).

d. A Lodestar Multiplier is Justified

“Though the lodestar figure is ‘presumptively reasonable,’ the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of ‘reasonableness’ factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941–42 (9th Cir. 2011) (internal citations omitted). “Foremost among these considerations, however, is the benefit obtained for the class.” *Id.* at 942.

i. Class Counsel Achieved a Significant Benefit to the Class

As described in detail *supra*, the settlement provides an exceptional and substantial benefit to the Class, especially given the uncertainties with data breach class action litigation. The

1 Settlement provides that Settlement Class members may submit claims for up to a maximum of
 2 \$10,000.00 for reimbursement of out-of-pocket expenses or losses. Ex. 1, ¶¶40, 50 (Doc. No. 36-1).
 3 For those Settlement Class members who spent time responding to the Cyber Security Event, they
 4 may submit a claim for reimbursement for up to three (3) hours at \$26.67 per hour. Ex. 1, ¶¶39, 40
 5 (Doc. No. 36-1).

6 Moreover, all Participating Settlement Class members shall have the opportunity to request
 7 access request access or extension of their access to credit monitoring and identity protection
 8 services through Kroll paid for by Defendant for a period of three (3) years after their actual
 9 enrollment or the Claims Deadline, whichever is later. Ex. 1, ¶38 (Doc. No. 36-1).

10 Further, because there is no aggregate cap on the Settlement, there is **no** possibility of
 11 reversion to Defendant.

12 **ii. Class Counsel Took a Significant Risk Pursuing this Action**

13 A multiplier would be further justified because the Action presented a significant risk of non-
 14 payment. *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2007); *Vizcaino*, 290 F.3d
 15 at 1048. “The district court *must* apply a risk multiplier to the lodestar ‘when (1) attorneys take a case
 16 with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does
 17 not reflect that risk, and (3) there is evidence the case was risky.’ Failure to apply a risk multiplier in
 18 cases that meet these criteria is an abuse of discretion.” *Stetson*, 821 F.3d at 1166 (emphasis in
 19 original) (citing *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (*quoting*
 20 *Fischel v. Equitable Life Assur. Soc’y of the United States*, 307 F.3d 997, 1008 (9th Cir. 2002)). In
 21 addition, “since the proper amount of fees is often open to dispute and the parties are compromising
 22 precisely to avoid litigation, the court need not inquire into the reasonableness of the fees even at the
 23 high end with precisely the same level of scrutiny as when the fee amount is litigated.” *Staton, supra*,
 24 327 F.3d at 966.

25 Further, “[i]t is an established practice in the private legal market to reward attorneys for
 26 taking the risk of non-payment by paying them a premium over their normal hourly rates for winning
 27 contingency cases.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir.
 28

1994); *see also Vizcaino*, 290 F.3d at 1051. The considerable risks undertaken by Class Counsel on an entirely contingent basis would further justify a multiplier here. *Vizcaino*, 290 F.3d at 1050. “The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.” *In re Omnivision*, 559 F. Supp. 2d at 1047. A multiplier finds further support where, as here, counsel has expended “substantial outlay” in time and resources while “there is a risk that none of it will be recovered.” *Id.*

Had the parties not agreed to the Settlement, continued litigation presented significant risk that the Class would recover nothing. First, continued litigation presents several procedural challenges. Indeed, class action data breaches are a novel and complex sector of law. As discussed in Plaintiffs’ Motion for Preliminary Approval, there are inherent risks associated with taking any data breach class action to trial, including pre-trial risks regarding class certification and summary judgment. Further, data breaches often result in injuries, such as the risk of future identity theft and loss of control of the plaintiffs’ Personal Information. Both are the subject of intense controversy and thus, addressing the nature and cause of Plaintiffs’ past damage, and the projection of Plaintiffs’ current and future damage due to the Cyber Security Event, will be strongly challenged. These issues add uncertainty to continued litigation. Next, obtaining class certification is uncertain in the current judicial landscape, particularly in the aftermath of the U.S. Supreme Court’s *TransUnion LLC v. Ramirez* decision. Certifying a class composed of more than 30,000 current and former employees affected by the Cyber Security Event presents complex issues that could undermine certification at the class certification stage as well as at other, later stages of the litigation.

Here, “[t]he Settlement . . . provides Class Members with another significant benefit that they would not have received if the case proceeded—certain and prompt relief.” *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 446 (E.D. Cal. July 1, 2013). The Settlement avoids continued, costly litigation of heavily contested and uncertain issues.

iii. Class Counsel Provided High-Quality Representation to the Class

The Court previously considered and scrutinized the qualifications of Federman &

1 Sherwood as Class Counsel in making its determinations necessary to issue its Preliminary Approval
 2 Order (Doc. No. 43). In addition, Class Counsel worked ably and diligently to achieve valuable
 3 relief for the Class. Class Counsel investigated Plaintiff Poling's claims prior to filing suit;
 4 investigated Plaintiff Jenkins' claims prior to filing the FAC; worked with both Parties' experts to
 5 determine the cause of the Cyber Security Event; engaged in informal written discovery; and
 6 attended a full-day mediation with counsel for Defendant. Federman Dec., ¶32, Ex. 1. During
 7 mediation, which was facilitated by an experienced mediator, Class Counsel worked alongside
 8 Defendant to arrive at settlement terms that would confer a significant benefit to the Class despite
 9 the inherent risks to the Class of continuing litigation.

10 **iv. The Requested Fee and Expense Award Would Result in a Multiplier**
 11 **of approximately 1.59, Which is Extremely Modest and Reasonable**

12 The total amount of attorneys' fees and expenses incurred and service awards sought by
 13 Class Counsel in connection with the prosecution of this action is \$220,806.40,⁵ not including time
 14 spent preparing this application for attorneys' fees and not including hours, if any, reduced or
 15 excluded in the exercise of billing judgment. *Id.*, ¶33, Ex. 1. Thus, the requested award of
 16 \$350,000.00 represents a very measured multiplier of 1.59 times Class Counsel's cumulative
 17 lodestar.

18 As discussed, a multiplier would be appropriate here given the excellent results Class Counsel
 19 obtained, the speed with which a resolution was reached and the risk of non-payment Class Counsel
 20 faced. In *Vizcaino, supra*, the trial court surveyed a number of common cases to find "a [multiplier]
 21 range of 0.6–19.6, with most . . . from 1.0–4.0[.]" 290 F.3d at 1051 n. 6; *see also* 3 Newberg §
 22 14.03 at 14-5 ("Multiples ranging from one to four are frequently awarded in common fund cases
 23 when the lodestar method is applied.").

24 Here, however, to arrive at a total fee and expense award in the amount of \$350,000.00 (the
 25 amount for attorneys' fees, reimbursement for expenses, and Plaintiffs' service awards sought by
 26
 27

28 ⁵ Of this amount, \$199,764.45 are Class Counsel's attorneys' fees, \$16,041.95 are litigation
 expenses, and \$5,000.00 is the total for both Plaintiffs' service awards sought.

Class Counsel), Class Counsel would be awarded a multiplier of approximately 1.59, which is extremely modest when compared with multipliers approved in other complex cases. *See, e.g., Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 1995) (upholding an award of 25% of the fund that resulted in a multiplier of approximately 5.2, citing precedent for awards “in this range or higher”); *Vizcaino*, 290 F.3d at 1051 & Appendix (approving a multiplier of 3.65 and citing multipliers up to 19.6); *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (“In recent years multipliers of between 3 and 4.5 have become common.”) (internal citations omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (finding that “a modest multiplier of 4.65 is fair and reasonable”).

The comparatively small 1.59 multiplier requested here will be reduced by the work Class Counsel will continue to provide on behalf of the Class. Indeed, this multiplier does not reflect the hours Class Counsel will spend preparing for and attending the final approval hearing, nor does it include additional services that Class Counsel will continue to provide through final approval and beyond, including overseeing the Settlement Administrator’s review of claims as needed, answering Class members’ questions as needed, and supervising the distribution of Settlement benefits as needed. The multiplier will at least partially, if not largely, be consumed by this remaining work.

Considering the favorable result achieved here by Class Counsel, that Class Counsel’s lodestar is decidedly reasonable when viewed against lodestars awarded in comparable actions, and the fact that the award of fees and reimbursement of expenses will in no way diminish the benefits provided to Class members, Plaintiffs respectfully submit that approving the \$350,000.00 fee and expense request is appropriate and warranted.

ii. The Fee Award Requested is Reasonable Under a Percentage of Recovery Analysis

“In cases in which the class benefit can be monetized with a reasonable degree of certainty, a percentage of the benefit approach may be used to cross-check the lodestar calculation.” *Hartless, supra*, 273 F.R.D. at 642. “Just as the lodestar method can confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate, the percentage-of-recovery method can

likewise be used to assure that counsel's fee does not dwarf class recovery." *In re Bluetooth Headset Prods. Liab. Litig.*, *supra*, 654 F.3d at 945 (internal quotations and citations omitted). Though the lodestar method is an appropriate means of calculating an awarded fee, the Ninth Circuit has "encouraged courts to guard against an unreasonable result by cross-checking their calculations against a second method." *Id.* at 944.

In the Ninth Circuit, courts apply the factors in *Vizcaino*, *supra*, to assess the reasonableness of an attorney fee, measured as a percentage of a common fund. 290 F.3d at 1048–50. The *Vizcaino* factors include: (1) the results achieved for the Class and whether they were exceptional; (2) the risk of the litigation; (3) benefits that exceed a cash fund; (4) standard contingency fees for similar common fund cases of comparable size; and (5) the burden of taking the matter on a contingency basis, including the extended nature of a case, the expense required, and the need to forgo other work during the pendency of the matter, all of which tend to reduce a firm's annual income. *See id.* at 1048–50. Here, the *Vizcaino* factors offer a helpful framework that justifies attorney fees, measured well below the total potential value of the settlement.

A. Exceptional Results for the Class

As discussed above, Class Counsel achieved a significant and valuable result for the Class, especially given the uncertainties related to class action data breach litigation. As briefed more fully in Plaintiffs' Motion for Preliminary Approval, the inherent risks of continuing litigation (e.g., obtaining class certification and surviving a motion for summary judgment and any subsequent appeal, all while Plaintiffs and Settlement Class members are all left without any recovery for their injuries) outweigh any potential benefit to continuing litigation. Instead, Settlement Class members will now have access to immediate relief.

B. Risk of the Litigation

As discussed above, had the Parties not agreed to the Settlement, continued litigation presented significant risk of no – or delayed – recovery to the Class. Risks of continued litigation include (1) obtaining class certification in an uncertain landscape; (2) surviving any dispositive motions; (3) no confirmation of change of business practices by Defendant, potentially leaving

1 Plaintiffs' and Class members' Personal Information exposed; (4) additional fees and expenses
 2 incurred on experts and time devoted litigating the Action; and (5) no immediate monetary or
 3 injunctive relief available to Plaintiffs.

4 **C. Benefits of Settlement Beyond the (Potential) Settlement** 5 **Fund**

6 As more fully briefed in Plaintiffs' Motion for Preliminary Approval, the total *potential*
 7 value of the settlement totals well over \$300 million. However, given the typical claims rate in class
 8 actions (anywhere from 2-5%), the total amount expended by Defendant will, most likely, be much
 9 less than that. Because the Parties were able to reach a Settlement prior to seeking class certification,
 10 Plaintiffs did not retain a damages expert.

11 The Settlement is exceptional in that it provides significant cash payments to Settlement
 12 Class members, both for time and money expended in response to the Cyber Security Event. The
 13 Settlement Class members are known to Defendant, which has provided their information to the
 14 Settlement Administrator. Thus, there is no need for Settlement Class members to spend time
 15 seeking out information related to the Settlement; information on how to participate in the
 16 Settlement will be sent directly to Settlement Class members. The claims process that was granted
 17 preliminary approval by this Court provides multiple straightforward, easy-to-understand methods
 18 for Settlement Class members to obtain relief (e.g., by mail or online).

19 Moreover, as discussed *supra*, Settlement Class members also have the ability to extend or
 20 enroll in credit monitoring, which is fully funded by Defendant. Additionally, Defendant has made
 21 multiple assurances regarding implementing business practices to better protect Settlement Class
 22 members' Personal Information going forward.

23 The ease with which Settlement Class members can seek relief from the Cyber Security
 24 Event, the ability to enroll in credit monitoring, and the business practice changes implemented by
 25 Defendant all benefit the Class beyond the (potential) cash settlement fund.

26 **D. Standard Contingency Fees For Similar Cases**

27 "A leading authority recognizes that '[e]mpirical studies show that . . . fee awards in class
 28

actions average around one-third of the recovery.” *Hershey v. ExxonMobil Oil Corp.*, 2012 U.S. Dist. LEXIS 153803, *21–22 (D. Kan. Oct. 26, 2012) (citing 4 H. Newberg & A. Conte, *Newberg on Class Actions*, § 14:6 (4th ed. 2006)). As noted in *Barbosa, supra*, 297 F.R.D. at 448:

The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent to 33.3 percent of the total settlement value, with 25 percent considered a benchmark percentage...The exact percentage awarded, however, varies depending on the facts of the case, and “in most common fund cases, the award exceeds that benchmark” percentage...nearly all common fund awards range around 30%.

(internal citations omitted).

One-third to 40% contingency retainers are typical in the rest of the country. *E.g., Blum v. Stenson*, 465 U.S. 886, 904 (1984) (“In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.”); *In re M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) (“In private contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total recovery.”); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (approving 40% contractual award if case went to trial); *Alpine Pharmacy v. Chas. Pfizer & Co.*, 481 F.2d 1045, 1051 (2d Cir. 1973) (approving 32% attorney fee recovery for settlement before trial); *McKenzie Constr., Inc. v. Maynard*, 823 F.2d 43 (3d Cir. 1987) (finding one-third contingent fee reasonable).

Here, Class Counsel is seeking far less than 25% - let alone 33% - of the total *potential* value of the settlement, which is well over \$300 million.⁶ Indeed, 25% of \$2.4 million (the total amount if the entire Class claims \$80.00 in time spent) is \$600,000.00.⁷ Class Counsel seeks far less than \$600,000.00. Further, Class Counsel bases their fee request on the injunctive relief and other non-monetary relief obtained for the Class, which is explained in more detail *supra*.⁸ Given typical claims rates of class action cases, discussed more *supra*, one may reasonably assume this action may have a claims rate of 4%. 4% of the Settlement Class is approximately 1,229

⁶ This figure is based upon if 30,000 Settlement Class Members are all compensated for \$10,000.00 for out-of-pocket losses attributed to the Cyber Security Incident. Ex. 1, ¶40. (Doc. No. 36-1).

⁷ Given low claims rates, the Settlement may total approximately \$2 million. 25% of \$2 million is \$500,000, and Class Counsel seeks far less.

⁸ The cost of the identity theft protection offered by Artech is approximately \$15.00 per year if 1,500 individuals enrolled.

1 individuals. If 1,299 individuals claim \$285 (potentially \$80 (the maximum for time lost) and \$205
2 in out-of-pocket losses), that is approximately Class Counsel's request for attorneys' fees.

3 **E. Burden on Class Counsel**

4 Finally, Class Counsel took on the burden of investing a significant amount of contingent
5 labor and contingent costs into this matter, which necessarily means fewer resources available for
6 other work in the meantime. Through settlement implementation, Class Counsel's timekeepers will
7 have put at least 346 hours into litigating this case. Class Counsel also incurred more than \$16,041.95
8 in costs, taking a financial risk in the event of a loss on any number of critical issues litigated during
9 the pendency of the case. Federman Dec., ¶34, **Ex. 1**. Class Counsel incurred *all* of this labor and
10 *all* of these costs on a contingency basis, with no guarantee of any recovery, and at a great cost to
11 their practices, since Class Counsel could have invested that time and money into other matters.

12 **v. The Absence of Collusion Between the Settling Parties Further Supports** 13 **the Requested Fee Award**

14 As the Court appropriately noted in its Preliminary Approval Order, district courts must
15 determine whether the settlement is, among other things, free of collusion. Preliminary Approval
16 Order, p. 9 (Doc. No. 43). The lack of collusion here, along with the arm's-length negotiations used
17 to reach the Settlement terms, support a finding that there was no collusion between the Parties'
18 counsel and weighs in favor of approving the requested fee award.

19 First, Class Counsel's fees and expense reimbursement, including service awards for the
20 Plaintiffs, if any, will be paid separate and apart from any relief paid to the Settlement Class.
21 Federman Dec., ¶35, **Ex. 1**. Second, the Settlement is non-reversionary; there is no possibility of
22 any possible settlement funds being diverted back to Defendant. Finally, it is evident that the
23 Settlement is not the result of collusion and that the requested fee award is not to the detriment of
24 the Class. The Settlement is the result of one full-day mediation session with an experienced
25 mediator. *Id.*, ¶36, **Ex. 1**.

26 **V. THE EXPENSES REQUEST IS REASONABLE**

27 Expense reimbursement awards "should be limited to typical out-of-pocket expenses that are
28

1 charged to a fee-paying client and should be reasonable and necessary.” *In re Immune Response Sec.*
 2 *Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007). Such reasonable and necessary expenses include
 3 the following: “1) meals, hotels, and transportation; 2) photocopies; 3) postage, telephone, and fax;
 4 4) filing fees; 5) messenger and overnight delivery; 6) online legal research; 7) class action notices;
 5 8) experts, consultants, and investigators; and 9) mediation fees.” *In re Immune Response Sec. Litig.*,
 6 497 F. Supp. 2d at 1177.

7 To date, Class Counsel have incurred \$16,041.95 in unreimbursed litigation costs on a
 8 contingency basis, described more *supra*. Federman Dec., ¶34, **Ex. 1**. Given the uncertainties with
 9 taking on a case of this magnitude in an unsettled part of law, Class Counsel incurred these costs to
 10 litigate successfully on the Class’s behalf, taking a financial risk in the event of a loss on any number
 11 of critical issues. These costs were incurred for the Class’s benefit. *Id.*

12 Because the costs incurred in the Action are reasonable, Class Counsel respectfully requests
 13 that the Court award \$16,041.95 in litigation costs reimbursements, to be paid as part of the total fee
 14 and expense award sought by Class Counsel totaling \$350,000.00.

15 **VI. THE NAMED PLAINTIFFS SHOULD BE AWARDED SERVICE AWARDS**

16 Service awards are “intended to compensate class representatives for work undertaken on
 17 behalf of a class” and “are fairly typical in class action cases.” *In re Online DVD-Rental Antitrust*
 18 *Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (internal quotation marks and citation omitted). Service
 19 awards of as much as \$5,000 for each plaintiff have been found “presumptively reasonable”
 20 throughout the Ninth Circuit. *See e.g., Pauley v. Cf Entm’t*, No. 2:13-CV-08011-RGK-CW, 2020
 21 U.S. Dist. LEXIS 187614, at *9 (C.D. Cal. July 23, 2020).

22 The Court should approve modest service awards here of \$2,500.00 to each of the two
 23 Named Plaintiffs. As described in their declarations, the Named Plaintiffs spent considerable time
 24 throughout the litigation fulfilling their responsibilities as plaintiffs and class representatives. *See*
 25 Declarations of Plaintiffs Brigid Poling and Dwight Jenkins, **Exhibits 2 and 3**, respectively, attached
 26 hereto. The amounts requested here are smaller than previous service awards awarded by the Court.
 27 *See, e.g. Villafan v. Broadpectrum Downstream Services, Inc.*, Case No. 3:18-cv-06741-LB (Doc.
 28

No. 150, filed April 8, 2021) (awarding the named plaintiff \$10,000.00); *see also, Harrison, et al. v. Bank of America Corporation*, Case No. 3:19-cv-02491-LB (Doc. No. 90, filed November 24, 2021) (awarding the named plaintiffs \$7,5000.00 each). The service awards requested here are also below this District's presumptive award of \$5,000.00 each. Additionally, the Service Awards granted by the Court, if any, will not be paid from funds available to Class but will be deducted from Class Counsel's sought fee award of \$350,000.00.

VII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant the instant motion for entry of an Order approving Class Counsel's request for: (i) an attorneys' fees award and reimbursement for expenses in the amount of \$350,000.00 (which includes the awards sought for the Named Plaintiffs); and (ii) payment of service awards of \$2,500.00 to each of the Named Plaintiffs.

DATED: December 3, 2021 Respectfully submitted,

/s/Robert S. Green
Robert S. Green (State Bar No. 136183)

James Robert Noblin (State Bar No. 114442)
Evan M. Sumer (State Bar No. 329181)
GREEN & NOBLIN, P.C.
2200 Larkspur Landing Circle, Suite 101
Larkspur, CA 94939
Telephone: (415) 477-6700
Facsimile: (415) 477-6710
Email: gnecf@classcounsel.com

William B. Federman*
wbf@federmanlaw.com
Oklahoma Bar No. 2853
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120
Telephone: (405) 235-1560
Facsimile: (405) 239-2112

**Admitted pro hac vice*

Cornelius P. Dukelow**
cdukelow@abingtonlaw.com
Oklahoma Bar No. 19086
ABINGTON COLE + ELLERY
320 South Boston Avenue
Suite 1130
Tulsa, Oklahoma 74103
918.588.3400 (*telephone & facsimile*)

***pro hac vice application forthcoming*

Counsel for Plaintiffs and the Proposed Class